

BILL ANALYSIS

Senate Research Center

H.B. 345
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Public entities depositing funds with financial institutions in excess of Federal Deposit Insurance Company insurance limits must receive a pledge of securities having a market value greater than their deposits. Provides that each entity is required to have their deposits collateralized individually, even if a financial institution holds several different deposits belonging to an entity.

H.B. 345 requires the comptroller of public accounts by rule to establish a program for centralized pooled collateralization of deposits of public funds and for monitor collateral maintained by participating institutions. The bill sets forth the participation requirements and administrative penalties for report violations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 2257.102, 2257.103, and 2257.105, Government Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2257, Government Code, by adding Subchapter F, as follows:

SUBCHAPTER F. POOLED COLLATERAL TO SECURE DEPOSITS OF PUBLIC FUNDS

Sec. 2257.101. DEFINITION. Defines "participating institution."

Sec. 2257.102. POOLED COLLATERAL PROGRAM. (a) Requires the comptroller of public accounts, as an alternative to collateralization under Subchapter B, to establish by rule a program for centralized pooled collateralization of deposits of public funds and for monitoring collateral maintained by participating institutions. Authorizes the comptroller to provide for a separate collateral pool for any single participating institution's deposits of public funds and also provide for one or more collateral pools for centralized collateralization of two or more identifiable participating institutions' deposits of public funds. Requires the rules to provide that deposits of public funds of a county are not eligible for collateralization under the program.

(b) Requires the pooled collateral program to provide for voluntary participation in the program by a participating institution, uniform procedures for processing all collateral transactions that are subject to an approved security agreement described by Section 2257.103, and the pledging of a participating institution's collateral securities using a single custodial account instead of an account for each depositor of public funds.

Sec. 2257.103. PARTICIPATION IN POOLED COLLATERAL PROGRAM. Authorizes a financial institution to participate in the pooled collateral program only if the institution has entered into a binding collateral security agreement with a public agency for a deposit of public funds and the agreement permits the institution's participation in the program; and the form of the collateral security agreement.

Sec. 2257.104. COLLATERAL REQUIRED; CUSTODIAN TRUSTEE. (a) Requires each participating institution to secure its deposits of public funds with eligible securities

the total value of which equals at least 102 percent of the amount of the deposits of public funds covered by a security agreement described by Section 2257.103 and deposited with the participating institution, reduced to the extent that the United States or an instrumentality of the United States insures the deposits. Provides that Section 2257.022(b) (regarding the total value of a certain eligible security to secure a deposit of public funds of a school district) the purposes of determining whether collateral is sufficient to secure a deposit of public funds, does not apply to a deposit of public funds held by the participating institution and collateralized under this subchapter.

(b) Requires a participating institution to provide for the collateral securities to be held by a custodian trustee, on behalf of the participating institution, in trust for the benefit of the pooled collateral program. Requires a custodian trustee to qualify as a custodian under Section 2257.041 (Deposits of Securities With Custodian).

(c) Requires the comptroller by rule to regulate a custodian trustee under the pooled collateral program in the manner proved by Subchapter C (Custodian Permitted Institution) to the extent practicable. Requires the rules to ensure that a custodian trustee depository does not own, is not owned by, and is independent of the financial institution or institutions for which it holds the securities in trust, except that the rules must allow a banker's bank, as defined by Section 34.105, Finance Code, and a federal home loan bank to be a custodian trustee.

Sec. 2257.105. MONITORING COLLATERAL. Requires each participating institution to file certain reports with the comptroller, as prescribed by rules of the comptroller.

Sec. 2257.106. ANNUAL ASSESSMENT. (a) Requires the comptroller to impose, once each state fiscal year, against each participating institution an assessment in an amount sufficient to pay the costs of administering an assessment in an amount sufficient to pay the costs of administering this subchapter. Requires the assessment to be imposed pro rata according to the aggregate average weekly deposit amounts during that state fiscal year of each institution's deposits of public funds collateralized under this subchapter.

(b) Requires the comptroller to provide to each participating institution a notice of the amount of the assessment against the institution.

(c) Requires a participating institution to remit to the comptroller the amount assessed against it under this section not later than the 45th day after the date the institution receives the notice under Subsection (b).

(d) Authorizes money remitted to the comptroller to be appropriated only for the purposes of administering this subchapter.

Sec. 2257.107. PENALTY FOR REPORTING VIOLATION. (a) Authorizes the comptroller to impose an administrative penalty against a participating institution that does not file a report required by Section 2257.105.

(b) Requires the penalty to be in an amount equal to \$100 for each day that elapses after the date the report is due until the date the report is filed.

Sec. 2257.108. PENALTY FOR COLLATERAL VIOLATION. (a) Authorizes the comptroller to impose an administrative penalty against a participating institution that does not maintain collateral in an amount and in the manner required by Section 2257.104 and rules of the comptroller.

(b) Requires the penalty to be in an amount equal to \$100 for each day the participating institution fails to maintain the collateral as required.

Sec. 2257.109. PENALTY FOR FAILURE TO PAY ASSESSMENT. (a) Authorizes the comptroller to impose an administrative penalty against a participating institution that does not pay an assessment against it in the time provided by Section 2257.106(c).

(b) Requires the penalty to be in an amount equal to \$100 for each day that elapses after the date the assessment is due until the date the assessment is paid.

Sec. 2257.110. PENALTIES NOT EXCLUSIVE. Provides that the penalties provided by Sections 2257.107-2257.109 are in addition to those provided by Subchapter D or other law.

Sec. 2257.111. PENALTY PROCEEDING CONTESTED CASE. Provides that a proceeding to impose a penalty under Sections 2257.107-2257.109 is a contested case under Chapter 2001 (Administrative Penalty).

Sec. 2257.112. SUIT TO COLLECT PENALTY. Authorizes the attorney general to sue to collect a penalty imposed under Sections 2257.107-2257.109.

Sec. 2257.113. ENFORCEMENT STAYED PENDING REVIEW. Authorizes enforcement of a penalty imposed under Sections 2257.107-2257.109 may be stayed during the time the order is under judicial review if the participating institution pays the penalty to the clerk of the court of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes a participating institution that cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the comptroller to contest the affidavit as provided by those rules.

Sec. 2257.114. USE OF COLLECTED PENALTIES. Authorizes money collected as penalties under this subchapter to be appropriated only for the purposes of administering this subchapter.

SECTION 2. Amends Section 2257.002(4), Government Code, to redefine "eligibility security."

SECTION 3. Requires the comptroller of public accounts to adopt rules as necessary to implement Subchapter F, Chapter 2257, Government Code, as added by this Act, so that the pooled collateral program established under that subchapter to begin operating not later than the first business day of April 2008.

SECTION 4. Effective date: September 1, 2007.